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FILED

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRES GOMEZ-GUTIERREZ,

Defendant.

NO. 14-CR-00400 EJD

JOINT STIPULATIONS AND WAIVERS FOR  
BENCH TRIAL

The parties hereby submit the following waiver and stipulations in anticipation of a bench trial scheduled for April 25, 2016, before this Court.

**I. INTRODUCTION**

This trial concerns the allegation that defendant Andres Gomez-Gutierrez ("defendant") is an alien who illegally reentered the United States after his removal to Mexico.

A grand jury returned an indictment on July 30, 2014, charging defendant with a single count of illegal reentry following deportation, in violation of 8 U.S.C. § 1326. On January 7, 2016, defendant moved to dismiss the indictment claiming that his right to a speedy trial had been violated by the delay between the filing of the complaint and the defendant's initial appearance in federal court. The United States filed an opposition, and defendant filed a reply. The Court held a hearing on March 7, 2016, and

1 denied the motion on the record and in a written opinion filed on March 22, 2016.

## 2 **II. WAIVER OF RIGHTS**

3 1. Pursuant to Federal Rule of Criminal Procedure 23, defendant waives his right to a jury  
4 trial, and the United States consents to have the Court conduct the trial in this case.

5 2. Defendant waives his right to testify and to call any witnesses on his own behalf, and he  
6 submits the matter for decision by the Court based on the factual stipulations below. Defendant has  
7 been informed of his right to have a trial by jury. Defendant has consulted with his lawyer regarding  
8 this decision. It is defendant's knowing intention to proceed to trial through this written statement of  
9 stipulated facts rather than calling and cross-examining witnesses.

10 3. The United States agrees not to call witnesses, and to submit the matter for decision  
11 based on the factual stipulations below.

12 4. The parties enter these stipulations with the understanding that defendant objects to the  
13 district court's March 22, 2016 ruling denying his motion to dismiss. The government and defendant  
14 agree that by entering these stipulations, defendant is not rendering moot his right to appeal the denial of  
15 his motion to dismiss. *See United States v. Larson*, 302 F.3d 1016, 1020 (9th Cir. 2002).

## 16 **III. FACTUAL STIPULATIONS**

17 But for these stipulations, at trial the United States would have introduced documents and called  
18 witnesses to establish at least the following facts:

19 1. Defendant Andres Gomez-Gutierrez ("defendant") is a citizen of Mexico, and is not now  
20 and has never been a citizen or national of the United States.

21 2. Defendant was deported or removed from the United States to Mexico on or about  
22 August 6, 2001, and on or about July 15, 2003.

23 3. On or after July 15, 2003, but no later than January 10, 2013, defendant voluntarily  
24 reentered and knowingly remained in the United States. On or about January 10, 2013, in Monterey  
25 County in the Northern District of California, defendant was found in the United States.

26 4. Defendant has never received the required permission to reenter the United States from  
27 either the Attorney General or the Secretary of Homeland Security.

5. On or about April 8, 1999, defendant was convicted in the Superior Court of California, County of Merced, of Possession of Methamphetamine for Sale, in violation of California Health and Safety Code § 11378 Defendant was sentenced to 32 months' imprisonment for this offense.

6. On or about January 10, 2013, defendant was arrested in Monterey County and charged with Unlawful Possession of a Firearm by a Convicted Felon, in violation of California Penal Code § 29800 with a gang enhancement under California Penal Code §186.22. On or about September 25, 2013, in the Superior Court of California, County of Monterey, defendant pled guilty and was sentenced to six years in prison.

**IT IS SO STIPULATED.**

DATED: April 25, 2016

BRIAN J. STRETCH  
United States Attorney

  
MARISSA HARRIS  
Assistant United States Attorney

DATED: April 25, 2016

  
ANDRES GOMEZ-GUTIERREZ  
Defendant

DATED: April 25, 2016

  
ROBERT CARLIN  
Assistant Federal Public Defender